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EUROPOL 15

## **OUTCOME OF PROCEEDINGS**

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of: Working Party on Europol

on: ~~7, 8 and 9 February 1995~~

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The Working Party on Europol met in Brussels on 7, 8 and 9 February 1995. Its discussions may be summarized as follows:

### **I. ADOPTION OF THE AGENDA**

The Working Party adopted the agenda contained in telex No 466 of 2 February 1995 on the understanding that the items "Status of EDU/Europol staff" and "Extension of the mandate of the EDU/Europol" would be discussed under item 3(d) ("Other business").

### **II. ORAL REPORT FROM THE PRESIDENCY ON THE MEETING OF STEERING GROUP II IN BRUSSELS ON 1 AND 2 FEBRUARY 1995**

(4684/95 ENFOPOL 21 and 4652/95 EUROPOL 13)

The Presidency briefed the Working Party on the "Europol" and "EDU/Europol" aspects of the abovementioned meeting of Steering Group II.

The German delegation said that in its opinion it had not withdrawn its scrutiny reservation on Article 5 of the draft Convention on the establishment of Europol (see 4652/95 EUROPOL 13, page 2).

### III. EDU

#### A. Budgetary questions

1. Presidency report on the conclusions of the financial experts meeting in the EDU on 2 February 1995 and discussion on this item

- (a) The Chairman of the meeting of financial experts informed the Working Party of the outcome of the meeting on the 1994 budget and the amending budget for 1995 held in The Hague on 2 February 1995.

He stated that savings of ECU 600 000 for 1994 (i.e. 30% of the 1994 budget) could not be used for 1995. They could be taken into account when the 1996 budget was decided, on the basis of the Financial Regulation adopted in 1993. The EDU would forward a document on the implementation of the 1994 budget before 1 April 1995.

- (b) As for the amending budget for 1995, the Working Party's discussions focused on the following matters:

– increase in certain items as a result of the accession of three new Member States to the European Union; items 301, 404, 405, 406, 407 and 420 (ECU 203 000) were involved;

- expenditure connected with research and projects under way; operational support for law-enforcement bodies in the Member States. It was agreed to earmark ECU 100 000 (Articles 301 and 302) in this connection;
- translations: the EDU proposed that Article 405 be increased by ECU 155 000 as an advance to be paid to the Translation Centre in Luxembourg;
- financial implications of extending the mandate;
- establishment of a budgetary monitoring committee (see 4143/95 EUROPOL 2).

The Chairman of the meeting of financial experts suggested that exceptionally the EDU coordinator be authorized to redistribute the proposed expenditure amongst the various operating articles so as to cover the additional expenditure connected with enlargement and the EDU's support function.

The Netherlands delegation, backed by other delegations, said it was difficult to take a stance on increasing the amounts connected with the support function as long as the delegations had not received specific proposals on that function. It wondered whether the liaison officers could not perform some of those tasks.

In this connection the EDU/Europol representative said that the NCIS had asked the EDU to carry out coordination duties.

The Presidency's suggestion that a budgetary monitoring committee be established had not been considered in detail at the meeting of financial experts. In any case the Working Party thought the financial experts could be given more appropriate documentation if necessary.

(c) The Working Party adopted the following conclusions:

- the EDU was authorized to redistribute certain expenditure within the 25% limit provided for in the Financial Regulation;
- the EDU should provide justification concerning the operational support;
- a new provisional item should be provided for, covering expenditure arising from the extension of the EDU responsibilities;
- a new budget heading (translations) should be created and appear in the amending budget for 1995;
- the financial experts should receive more information prior to their meetings, which should also be more frequent so as to ensure more efficient budget monitoring; the Presidency reserved the right to submit fresh, alternative proposals for that purpose.

On the basis of these guidelines a revised amending budget is to be prepared and submitted to the meeting of financial experts on 5 and 6 April 1995. The budget will have to be prepared at that meeting for submission to the JHA Council meeting in June 1995.

The Working Party took note of a statement by the:

- EDU representative undertaking to submit additional documentation to the financial experts;
  - Commission representative undertaking to negotiate a more favourable rate than currently provided for (10% of the EDU budget) for advances to the Translation Centre in Luxembourg.
2. The Working Party pointed out that at its meeting on 9 and 10 March 1995 the JHA Council would have to take a decision on the amount of Austria, Sweden and Finland's contribution to the EDU budget.

The Presidency gave notice that it would submit a note to Steering Group II on this subject.

**B. Presentation by the EDU management of the report on activities for 1994 and discussion**  
(4533/95 EUROPOL 8)

The Working Party discussed the above report submitted by the Director of the EDU under the provisions of the Interministerial Agreement of June 1993.

The Working Party agreed to the report provided that in a revised version:

- the diagram on page 14 was adapted;
- further details were provided on the development of relations with the NCIS and on the status of the staff.

It was agreed that the revised report would be submitted to the competent fora so that it could be adopted by the JHA Council at its meeting on 9 and 10 March 1995.

The EDU was asked to consider preparing a summary of the report for submission to the Council. Certain parts of that summary could be used as documentation for the press at the official ceremony in The Hague on 15 March 1995.

**C. Presentation by the EDU management of the EDU work programme for the first half of 1995 and discussion** (4534/95 EUROPOL 9)

The Working Party considered the above note. This work programme was only provisional since the new tasks of the EDU did not appear in it.

Further information was requested on the support function and on contacts with other bodies and third countries. As regards the support function, the Working Party took note with interest of a first document on this subject submitted by the EDU representative during the meeting.

The EDU representative gave notice that his organization would shortly be submitting a note on external contacts it had made.

The Working Party agreed to examine the revised report as soon as it was available.

**D. Other business**

1. Extension of the mandate of the EDU

The Working Party pointed to the importance of forwarding a work programme containing the EDU's new tasks. On the basis of that programme the financial impact could be evaluated.

The EDU representative informed the Working Party that the NCIS had first to state its position on the new tasks. A provisional text would be forwarded to the Working Party's meeting on 20 February 1995. A more detailed document would then be submitted to Steering Group II for its meeting on 25 and 26 March 1995. In the light of that document the actual start of the EDU's new tasks and the resulting financial impact could be determined.

2. Status of EDU/Europol staff (request by the Netherlands delegation)

In the light of information provided by the Netherlands delegation the Presidency asked the delegations concerned to speed up the procedures for exchanging letters on the status of their liaison officers.

#### IV. DRAFT EUROPOL CONVENTION (10324/2/94 EUROPOL 112 REV 2)

The Working Party's discussions focused on the following subjects:

##### A. Article 2 (4598/95 EUROPOL 10 and 4704/95 EUROPOL 14)

###### 1. Terrorism

The United Kingdom delegation stressed the need for an appropriate definition of the concept of terrorism. It gave notice that it would be submitting a text on this subject.

The Swedish delegation said it should be made clear that what was involved was police cooperation in the fight against terrorism.

The Presidency reserved the right to submit a proposal on this matter at a later date.

###### 2. Related offences

With reference to its note in 4648/95 EUROPOL 12, the German delegation wanted to consider as related offences only offences which were to be regarded as specific acts of a form of crime in relation to the list attached to Article 2, even if Europol had not yet been given responsibility for preventing and combating the form of crime concerned. Furthermore, the definition of "*related offence*" which currently appears in the Annex would have to be inserted directly into Article 2 of the Convention.

The United Kingdom delegation was in favour of a broader approach. The notion of "*related offences*" should be replaced by the notion of "*related acts*".

### 3. Text of the Annex on page 2 of 4704/95 EUROPOL 14

In response to delegations' comments the

Presidency suggested:

- deleting the words "*in particular*" in the three indents relating to forms of crime;
- keeping in square brackets the words "*racism and xenophobia, corruption and illicit trafficking in hormonal substances for livestock*" pending the outcome of discussions in other fora dealing with these matters;
- wording the third indent as follows: "*illegal trading and environmental crime*";
- wording the second indent of the third heading as follows: "*illicit trafficking in cultural goods including antiques and works of art*".

The German delegation referred to its comments on this Annex (see 4648/95 EUROPOL 12) and thought that the discussion should be continued on the basis of that document.

### 4. Definitions

The Working Party agreed to examine at a forthcoming meeting the definitions on page 3 of 4704/95 EUROPOL 14.

Delegations were asked to forward their written comments on the definitions.

Following discussions on this Article the Presidency pointed to:

- the agreement in principle on Article 2, subject to the United Kingdom delegation's comments on the concept of terrorism;
- the German delegation's reservation on the notion of "related".

**B. Article 5** (4269/1/95 EUROPOL 5 REV 1)

1. Article 5(1)

The Presidency suggested that the second sentence of the first paragraph of Article 5 read as follows: *"The number of liaison officers which may be sent by Member States to Europol shall be laid down by unanimous decision of the Management Board"*.

The German delegation preferred the wording in 10324/2/94 EUROPOL 112 REV 2 to the effect that the Management Board lays down the number of liaison officers for each Member State.

The Danish delegation entered a linguistic reservation on the text.

2. Article 5(7)

(a) The Working Party agreed that the beginning of this paragraph should read as follows: *"Without prejudice to the provisions of the Convention, details of the rights and obligations ... Management Board"*.

(b) As for the second sentence, in square brackets:

- the Belgian delegation was in favour of including this sentence in Article 25;
- the German delegation preferred to delete it.

**C. Right to information - exercise and follow-up** (4704/95 EUROPOL 14)

1. Right of access

Ten delegations agreed on the right of access arrangements set out on page 6 of 4704/95 EUROPOL 14. The Irish, Swedish and Finnish delegations entered scrutiny reservations.

The German and Netherlands delegations tabled reservations on the text submitted by the Presidency. They were in favour of direct access arrangements under which Europol (German delegation) or the joint supervisory body (Netherlands delegation) would provide the applicant with information on the data kept on him by Europol and also on the origin or destination of such data and the reason for their being stored.

Furthermore, in its note (see 4932/95 EUROPOL 20), the Netherlands delegation advocated the possibility of legal redress in the event of refusal to provide information.

The Presidency stressed that the arrangements it was proposing already constituted a compromise between the position of Member States which have a direct access system (see paragraph 4, second subparagraph) and that of Member States which have an indirect access system. Its approach would not necessitate any change to existing national laws.

## 2. Correction and deletion of data in data files

The Presidency noted agreement in principle on the approach set out on page 7 of 4704/95 EUROPOL 14, on the understanding that there would be a clearer differentiation between data stored in the analysis system and the other data. It accordingly submitted a new text as annexed hereto.

The German delegation stressed the need to provide that a person was entitled to have data concerning him corrected and deleted (see 10324/2/94 EUROPOL 112 REV 2, Article 18(2)).

## 3. Liability for unauthorized or incorrect data processing

The Working Party made a thorough examination of the Presidency text on page 7 of 4704/95 EUROPOL 14. Discussion focused on the provision in paragraph 1 whereby the injured party may claim compensation only against the Member State where the injury was sustained, by applying to the competent courts under national law.

The German delegation said that provisions governing Europol's own liability and liability for injury caused in accordance with Articles 35 and 36 of the draft Convention (see 10324/2/94 EUROPOL 112 REV 2) needed to be drawn up. A solution should be based on Article 126(3) of the Convention implementing the Schengen Agreement. It pointed out that under its national law the German authorities could be held liable only where an injury caused through the fault of those authorities was sustained in Germany.

The Belgian delegation wondered whether it should not be possible for a person to bring an action for compensation in a Member State other than the one in which the injury was sustained.

The Netherlands delegation said it had a reservation on the Presidency text if it meant that only the authorities of the country in which injury was sustained were responsible for that injury. The principle of a Member State's liability for unauthorized or incorrect data processing should be included in the text of the Convention.

The Presidency said that its proposal in no way prejudiced the application of Article 36(2) (liability for direct injury sustained by a person). It would give thought to a new text, in particular in the light of the Belgian delegation's comments.

#### **D. Matters of architecture**

- 1. Security and confidentiality in accessing and processing data: compromise proposal from the Presidency made at the informal meeting of JHA Ministers held in Paris on 26 January 1995** (4268/95 EUROPOL 4)

The Presidency submitted the abovementioned compromise. In this connection the Belgian delegation gave a visual presentation of the workings of the strategic and operational analyses used by its departments. A written description of these methods would be forwarded.

(a) On the Presidency compromise, the following comments were made.

(i) text on page 1 of 4268/95 EUROPOL 4

The Netherlands delegation wanted to supplement:

- the second indent by a reference to the Europol objectives in Article 2(1);
- the third indent with a reference to the fact that it was also Europol's task to carry out analyses.

The German delegation wanted:

- it specified that Europol had the function of supporting the Member States' authorities;
- the word "*agreement*" in the fifth indent to be replaced by "*opinion being sought*".

(ii) Paragraph 1 on page 2

The German delegation preferred the idea of "*non-standard information*" to that of "*sensitive information*".

The Netherlands delegation favoured a system in which sensitive data would not automatically be stored in an analysis system.

The Presidency pointed out that the country of origin of the data would determine the degree of sensitivity. Some data could be transmitted directly to the analysis groups without first passing through the hands of the liaison officers concerned.

(iii) Paragraph 3

The Netherlands delegation wanted close cooperation between analysts and experts of the Member States concerned to be referred to in this paragraph.

It was understood that this paragraph in no way prejudiced the provisions of Article 12.

(iv) Paragraph 4

It was agreed that in the second line of this paragraph the words "*he would*" should read "*he and his Member State*".

The German delegation welcomed the fact that liaison officers no longer had direct access.

It was against liaison officers or experts from the Member States being automatically associated with analyses in progress. Consequently, in the second line the words "*that he needed*" should be replaced by "*that he might need*".

The Netherlands delegation felt that it should be possible to refuse association with an analysis in progress. The Belgian delegation thought that an arbitration procedure should be worked out to solve these problems. Such a procedure should relate in particular to analyses of an operational type. The United Kingdom delegation wanted an authority to decide whether it was necessary to know about an analysis.

(v) Paragraph 5

Some delegations thought this paragraph unnecessary.

(vi) Paragraph 6

The German delegation indicated its agreement to the Presidency's approach. A distinction should be made between the various objectives and stages of an analysis.

The United Kingdom delegation wanted the concepts of "*sensitivity*" and "*use*" to be defined.

The Presidency said that strict rules should be drawn up for use of an analysis.

(b) On a general level, all delegations thought that the Presidency's approach provided a good basis for further work.

The German and Netherlands delegations stressed that this compromise covered only some operational analyses. The Netherlands delegation wanted the various procedures to allow the Director and Deputy Directors of Europol to play a role before the Management Board became involved.

The Presidency announced that it would be submitting a new text in the light of delegations' comments. It would try to take account in particular of the Belgian delegation's comments on setting up a system of arbitration for association with operational analyses.

## 2. **Types of personal data stored and processed by Europol**

(4704/95 EUROPOL 14, Annex B)

The German delegation confirmed its reservation on the list of types of personal data stored by Europol contained in Annex B to the above document. It would prefer this list to be given in separate articles concerning the information system and the analysis system.

Regarding the inclusion of certain types of data such as those referred to in Article 6 of Chapter II of the Council of Europe Convention of 28 January 1981, and in the light of the inclusion of terrorism among Europol's responsibilities, the Netherlands delegation wanted an input of some types of personal data where there was a direct link with the criminal offence. This question should be settled in the text of the Convention.

The Belgian delegation referred to its comments on this as given in 10610/94 EUROPOL 116. It advocated a system in which, when an analysis system was being set up, a decision could be taken to include in the file certain types of data referred to in the relevant part of the Council of Europe Convention of 28 January 1981.

### 3. Design of the system

The Presidency outlined the principles of the Europol data-processing system, comprising the following features:

- general data-processing system open to liaison officers, NCISs and Europol staff;
- analysis system: the work files (see point 2 above);
- index system accessible to Europol officials and liaison officers, enabling the latter to decide whether they need to know.

The Working Party recorded its agreement to these principles.

The Working Party's discussion focused on the following:

#### (a) Index system

In response to comments from the United Kingdom delegation in particular, the Working Party recorded its agreement on the following wording of Article 10a:

#### *"Article 10a*

1. *An index system shall be created by Europol for the data stored on the files referred to in Article 10(1).*

2. *In addition to Europol, liaison officers shall have the right to consult the index system. The index system must be such as to ensure that, on the basis of the data called up, it is clear whether the files referred to in Article 10(1) – or Article 5a(2) – contain data concerning the seconding Member State. Access by liaison officers shall be designed in such a way that it is possible to ascertain whether or not information is stored but it is not possible to establish connections and further conclusions concerning the content of the files.*
3. *The Management Board shall unanimously decide on further details concerning the design of the index system."*

(b) General information system

- (i) The discussion focused on the question of where data which were no longer sensitive were to be put. In the Presidency's view, such data should go into the general information system which should in turn be used as a source for temporary analysis files.

The German delegation was in favour of two separate systems, each subject to these specific rules.

- (ii) The Presidency took the view that the general information system to be used as a source for the analysis system should contain both standardized data which could be encoded and unrestricted data. A feasibility study would have to be made to provide guidance about the precise design.

The German delegation said that it was in favour of a directory system. Unrestricted data should not be included for practical reasons (e.g. language arrangements) and legal reasons (German data-protection arrangements). The Belgian delegation shared these concerns.

The Netherlands delegation said that unrestricted data should contain only personal information.

The Presidency noted that there was disagreement about the objectives of the information system.

The French delegation advocated a general system allowing for interaction with the analysis system, while the German delegation in particular suggested a directory-type system which would be compulsorily supplied by national units, making direct contacts possible.

The Presidency said that it would endeavour to formulate suggestions about the nature of the general information system in the light of delegations' comments.

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The Presidency informed the Working Party that it intended, in preparation for the latter's meeting on 20 February 1995, to submit Presidency suggestions concerning the topics discussed at the present meeting.

CORRECTION AND DELETION OF DATA IN DATA FILES

1. If it emerges that data held by Europol, communicated to it by third countries or third organizations or resulting from its own analysis activity, are incorrect or that their input or storage contravenes this Convention, Europol shall correct or delete such data.
2. *If data which are incorrect or contravene this Convention are communicated by Member States to Europol, such data shall be corrected or deleted by the Member States in consultation with Europol. If the errors affecting such data are the result of Europol taking account of and storing that data, Europol shall be required to remedy the situation in consultation with the Member States.*
3. In either case the Member State(s) *receiving such data* shall be informed without delay. The latter shall also correct or delete such data.